

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SCOTT G. MCVEY</b>	)	
Claimant	)	
VS.	)	
	)	
<b>FRONTIERS, L.L.C.</b>	)	Docket No. 267,785
Uninsured Respondent	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent appealed Administrative Law Judge Steven J. Howard's Order dated October 2, 2002.

**ISSUES**

Respondent raised the following issue:

“Did the Administrative Law Judge err in reinstating previously dismissed claim with prejudice by ruling that an Administrative Law Judge’s stamped signature is not valid despite said Administrative Law Judge’s testimony that her stamped signature stands as her valid signature, thereby voiding the original file stamped Dismissal?”

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The pro se claimant and the pro se respondent signed a Stipulation of Dismissal with Prejudice (Stipulation) prepared by the attorney for American Family Insurance Company (American). The parties then filed it with the Kansas Division of Workers

Compensation (Division) on October 3, 2001. Administrative Law Judge Julie A. N. Sample testified that she did not review or sign the document. Instead, her assistant stamped her signature on the document without authorization.

It is acknowledged that American, which was providing workers' compensation insurance to respondent at the time the Stipulation was prepared, did not have a contract with respondent at the time of claimant's accident. Respondent was apparently uninsured at that time.

On May 17, 2002, claimant filed a motion requesting that the Stipulation be set aside. Administrative Law Judge Steven J. Howard heard the motion and set aside the Stipulation. He reasoned that the stamped order was ineffectual to dismiss claimant's claim under the provisions of K.S.A. 44-525 and K.S.A. 44-536a. The Board affirms the Administrative Law Judge's ultimate determination, but on another basis.

The Board finds that K.S.A. 44-536a has no bearing on the issue. The statute relates to documents signed and filed by the parties, not administrative law judges. Similarly, the Board finds that K.S.A. 44-525 is not controlling. The fact that the Administrative Law Judge did not sign the Stipulation, as opposed to the stamped signature, is irrelevant. The fact that the Administrative Law Judge did not actually review and approve the Stipulation, however, requires the Board to affirm the Administrative Law Judge's decision.

The Kansas Workers Compensation Act, K.S.A. 44-501 *et seq.*, and its implementing regulations allow parties to voluntarily dismiss cases. K.A.R. 51-3-1 provides that compensable cases may be terminated by voluntary dismissal by the parties. No other regulation deals with the procedure for obtaining a voluntary dismissal.

The Kansas Workers Compensation Act does not specifically address the procedure for obtaining a voluntary dismissal per se. The only applicable procedural statute is K.S.A. 44-527. This statute provides in relevant part:

The director shall accept, receipt for, and file every agreement, finding, award, agreement modifying an award, final receipt for compensation or **release of liability or copy thereof**, and record and index same, and every such agreement, finding, award, agreement modifying an award, final receipt or release, shall be considered as approved by the director and shall stand as approved **unless said director shall, within 20 days of the date of the receipt thereof, disapprove same in writing and notify each of the parties of his disapproval, giving his reasons therefor, sending a copy of the same to each of the parties by certified mail, return receipt requested.** No proceedings shall be instituted by either party to set aside any such agreement, release of liability, final receipt for compensation or agreement modifying an award, **unless such proceedings are**

**commenced within one year after the date any such agreement, release of liability, final receipt for compensation or agreement modifying an award has been so filed and approved by the director.** (Emphasis added.)

The Board finds that the Stipulation of Dismissal amounted to a “release of liability” under the statute. According to the plain and unambiguous language of the foregoing statute, the Administrative Law Judge did not have to sign a release of liability for it to be effective. K.S.A. 44-527 creates a “presumption of approval” by stating that a release of liability not disapproved within twenty days of its receipt will be considered approved by the Director.<sup>1</sup> Stamped signature or not, had the Administrative Law Judge actually reviewed and approved the Stipulation, it would have become effective twenty days after the Director received it under K.S.A. 44-527’s mandates. But the Board finds that the preponderance of the credible evidence supports a finding that the Administrative Law Judge did not review and approve the Stipulation.

The Kansas Supreme Court has interpreted K.S.A. 44-527 as requiring Director approval of every “release of liability or copy thereof.” While not directly on point, *Barncord* teaches that “the purpose of the approval requirement . . . is to ensure that . . . the worker is provided fair and adequate compensation.”<sup>2</sup> As evidenced by the testimony in this case, this statutory guarantee was not afforded claimant.

Additionally, even if the Stipulation of Dismissal was valid, K.S.A. 44-527 creates a one-year statute of limitations within which an action to set aside may be commenced. Claimant’s Motion To Set Aside the October 3, 2001 Stipulation was filed on May 17, 2002, well within the one-year time limit and, in this matter, good cause was shown for doing so. For this reason, the Board must affirm the Administrative Law Judge.

Accordingly, the Board finds that the Administrative Law Judge did not err when he set aside the Stipulation.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated October 2, 2002, is affirmed.

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<sup>1</sup> See *Barncord v. Kansas Dept. of Transportation*, 4 Kan. App. 2d 368, 606 P.2d 501 (1980), *aff’d* 228 Kan. 289, 613 P.2d 670 (1980).

<sup>2</sup> *Barncord*, at 373.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Daniel L. Smith, Attorney for Claimant  
Mark J. Hoffmeister, Attorney for Uninsured Respondent  
Joseph R. Ebbert, Attorney for American Family Insurance Company  
Derek R. Chappell, Attorney for Fund  
Steven J. Howard, Administrative Law Judge  
Director, Division of Workers Compensation